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Related Agencies, United States Senate**

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Status of Safety Requirements for Cross- Border Trucking With Mexico Under NAFTA

**Statement of
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Chairman Murray, Ranking Member Bond, and Members of the Subcommittee:

We appreciate the opportunity to testify today as you evaluate the status of safety requirements for cross-border trucking with Mexico under the provisions of the North American Free Trade Agreement. The pilot program announced by the Administration to allow a select group of Mexican trucking companies to operate beyond the commercial zones along the southwest border has refocused attention on this area.

Since 1998 we have issued seven reports and testified twice before Congress on our findings and recommendations on the Department's efforts to improve cross-border trucking safety and meet requirements established, in large part, by this Subcommittee. We expect to issue our eighth report shortly, and this work will be the basis for my testimony today.

As you know, the Department of Transportation's (DOT) Fiscal Year 2002 Transportation Appropriations Act (Section 350)¹ established a number of safety requirements and preconditions before the Federal Motor Carrier Safety Administration (FMCSA) may process applications from Mexican motor carriers for operating beyond the commercial zones. In addition, before Mexican motor carriers can operate under authority granted by FMCSA, the Inspector General (IG) must review eight specific criteria, as shown in the table.

After this review, Mexican carriers that have been granted operating authority by FMCSA may proceed to operate beyond the commercial zones, provided the Secretary of Transportation certifies, in a manner addressing the IG's findings, that such operation does not pose an unacceptable risk to the American public. Our initial review of the eight criteria was completed in June 2002 and the Secretary's certification followed in November 2002. We have continued to review border operations, as required by Congress.

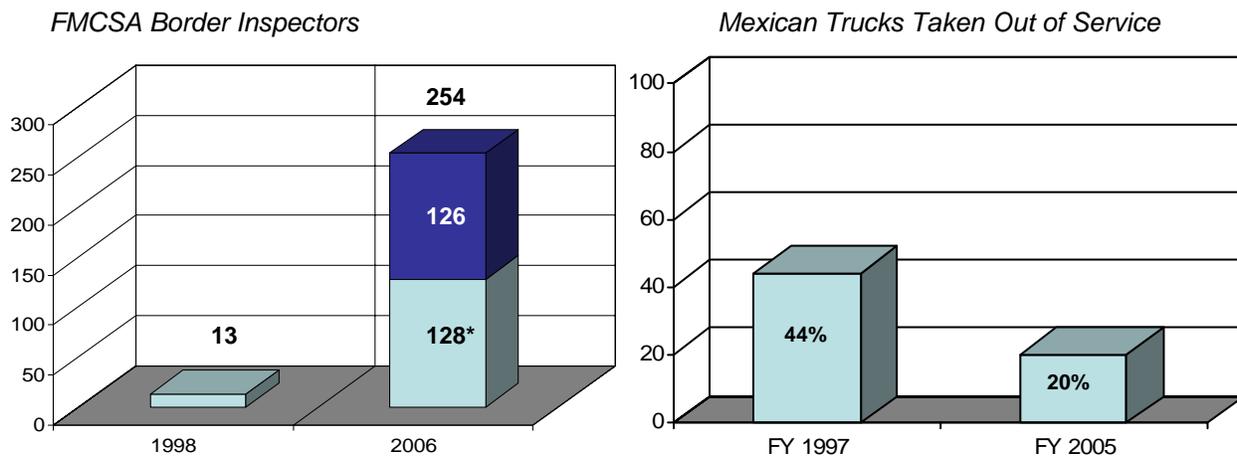
Table. Section 350(c)(1) Criteria Subject To OIG Audit
(A) Filling and training inspection positions (B) Training inspectors conducting on-site reviews as safety specialists (C) Not transferring inspectors to fill positions (D) Implementing an hours-of-service policy (E) Having a sufficiently accurate, accessible, and integrated information infrastructure and adequate telecommunications links (F) Having adequate capacity at crossings to conduct meaningful inspections (G) Sufficient databases to allow safety monitoring of Mexican carriers and drivers (H) Measures for ensuring effective enforcement and monitoring of Mexican carrier licensing
Source: Fiscal Year 2002 Transportation Appropriations Act

¹ Public Law 107-87.

Significant Progress Has Been Made in Border Safety

Data from our current review and earlier reports point to continual improvement in the border safety program. For example, FMCSA has hired and trained the inspectors, as required by the Act, thus the average number of inspections per Mexican motor carrier has increased over time. As a result, both the number of FMCSA inspectors at the border and the percentage of Mexican trucks taken out of service after inspection have improved dramatically. In 1998 we reported that FMCSA had only 13 Federal inspectors at the southern border, and that 44 percent of Mexican trucks inspected in FY 1997 were removed from service because of safety violations. By contrast, as shown in the figure, audit work now underway found 254 FMCSA enforcement personnel at the border (which includes 128 inspectors), and the percentage of Mexican trucks placed out of service following inspections had dropped to 20 percent in FY 2005, a figure comparable to the out-of-service rate for U.S. trucks.

Figure. Comparison of Border Inspectors and Mexican Trucks Taken Out of Service Over Time



*Data as of June 2006. In addition to inspectors, another 126 FMCSA enforcement personnel identified included 49 auditors, 47 investigators, and 30 supervisors or support staff.

Our current work also assessed FMCSA's actions in response to our last report to the Department, issued in January 2005.² In that report we found that FMCSA had in place the staff, facilities, equipment, and procedures necessary to substantially meet the eight specific criteria. The report made four recommendations for improvement, which addressed actions relevant to the eight criteria. Of the four issues, two have been adequately addressed.

² OIG Report Number MH-2005-032, *Follow-up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross Border Trucking Provisions*, January 3, 2005. OIG reports are available on our web site: www.oig.dot.gov.

FMCSA and the states have made significant progress in resolving problems associated with making sure all states can take effective enforcement action against Mexican motor carriers. One of the criteria³ subject to IG review calls for measures in place to ensure “effective enforcement” and monitoring of Mexican motor carrier licensing. The five states, which had not yet done so at the time of our last report, have adopted a rule requiring enforcement action against Mexican motor carriers or others operating without proper authority from FMCSA. Thus, all states can now place vehicles out of service or take equivalent action for operating authority violations. State officials also reported they are experiencing less difficulty in implementing these rules due to changes in the Commercial Vehicle Safety Alliance⁴ criteria and training provided by both the Alliance and FMCSA.

A remaining concern we have based on contacts with officials in three states outside the border region involves procedures for obtaining information on the status of a carrier’s operating authority. For example, officials at two states contacted noted difficulties with determining operating authority because the police cars did not have Internet access for checking the status of carriers. However, the two officials did not know about the 800 number from FMCSA that could be used for that purpose. At another state, the official contacted was aware of the 800 number but said few of the cars had cell phones to call FMCSA’s 800 number. In our view, these examples illustrate how important it is for FMCSA to provide continued training on the topic and to maintain a good information support system so that motor carrier enforcement officials have the information they need to identify carriers operating without proper authority. We will continue to monitor this issue as part of our annual reviews.

FMCSA has also taken action needed to make certain weighing scales are fully operational.⁵ Our 2005 report found that while weigh-in-motion scales were in place at the ten highest-volume crossings, at the time of our visits, the scales were not working at four Texas facilities. In response to our recommendation to identify actions needed to make all weigh-in-motion scales fully operable, FMCSA said it would require each of the three border states (Arizona, California, and Texas) having weigh-in-motion scales to have a maintenance program included in their commercial vehicle safety plans. Our current review verified that the plans do include this requirement, and we

³ Section 350 (c)(1)(H).

⁴ The Commercial Vehicle Safety Alliance is an organization of Federal, state, and provincial government agencies and representatives from private industry in the United States, Canada, and Mexico, dedicated to improving commercial safety.

⁵ This action complies with the Section 350 (a) requirement that weigh-in-motion scales be in place at the ten highest-volume southern border commercial crossings, and with the Section 350 (c)(1)(F) criteria that those border crossings have the capacity to conduct meaningful motor carrier inspections.

confirmed through visits or FMCSA documentation that all weigh-in-motion scales are operable.

Two Section 350 Criteria Require Additional Attention

Despite the progress that FMCSA has made, additional improvements are needed in two of the eight Section 350 (c) criteria subject to OIG review.

- Improving the quality of the data used to monitor Mexican commercial driver traffic convictions in the United States.
- Ensuring adequate capacity to inspect buses.

I will discuss each of these issues in-depth, along with two that are outside the specific requirements of Section 350 but which FMCSA and the Department should continue to address.

- Full implementation of a FMCSA policy on compliance with Federal motor vehicle manufacturing safety standards.
- Continued attention needed on drug and alcohol testing issues.

Finally, I will conclude today with preliminary observations about the announced pilot program.

Three Systems are in Place to Monitor Mexican Carriers and Drivers, But Data for One of the Three Systems Were Incomplete

One criteria of the Act⁶ calls for an accessible database containing “sufficiently comprehensive data” for monitoring all Mexican motor carriers and their drivers that apply for authority to operate beyond the municipal and commercial zones on the United States-Mexico border. Three systems have been established to meet this requirement.

The first system monitors Mexican carriers in the United States granted long-haul authority. It is designed to identify carriers requiring compliance reviews, generate letters on corrective actions, and create a history of violations and corrective dates. Our prior audit work has verified that the system is operational.

⁶ Section 350 (c)(1)(G).

The second system, Mexico's Licencia Federal Information System (LIFIS), contains records showing Mexican motor carrier commercial drivers with valid, disqualified, or expired licenses. Our work indicates that LIFIS is being accessed for enforcement purposes and the data were sufficient.

The third system, which is called the 52nd State System, contains records of traffic violations Mexican commercial drivers commit in the United States. Our current work found the system's data were incomplete. I will now discuss this issue in more detail.

52nd State System is Operational but Data Issues Require Continued Attention

The 52nd State System is needed to ensure that U.S. officials can disqualify Mexican commercial drivers operating in the United States for the same offenses that would lead to the disqualification of a U.S. commercial driver. We found that 49 states and the District of Columbia can electronically record convictions into the 52nd State System.⁷ However, the data also show that inconsistencies and reporting problems found previously at the border states with the 52nd State System still require continued action and monitoring. For instance:

- Data that Texas reported in the database showed a dramatic decline in the number of traffic convictions for Mexican-licensed drivers from January through May 2006. When we brought this anomaly to FMCSA's attention in July 2006, it investigated the situation and found that Texas had stopped providing conviction information to the database. Subsequently, after developing an action plan with the state, FMCSA reported that Texas has eliminated a backlog of some 40,000 Mexican commercial driver's license tickets. We do not know how long it took for the backlog to develop. The period could go back to well before 2006. According to FMCSA, Texas has the ability to provide information to the database electronically but it is currently providing information to the database using a manual process pending development of a new computer system this year.
- Our current review also found that New Mexico stopped reporting traffic convictions for Mexican commercial drivers to the database after July 2005. A subsequent review by FMCSA found that the problem was due to incorrect computer programming, which was to be corrected by the end of July 2006.
- Arizona and California also experienced problems that prevented some traffic convictions of Mexican commercial drivers from being properly recorded into

⁷ The remaining state, Oregon, has committed to completing a test of its system by September 2008 and continues to submit its data on U.S. and Mexican violations manually to the 52nd State System.

the database. California was scheduled to make a change to correct the issue by October 2006. Arizona was implementing a manual procedure to address the problem and was scheduled to begin a change in the computer system this month.

To its credit, FMCSA took quick action during our current review to work with the four border states to develop corrective action plans addressing these issues. But strong follow-up action by FMCSA will be necessary to ensure that these plans are implemented. Alternatively, interim solutions should be implemented if the plans cannot be completed in a timely fashion. We also recommend that FMCSA develop a process that ensures performance of a quarterly inspection of the database, notification to states of data inconsistencies, and assurance that states take immediate steps to correct inconsistencies. The process must also ensure that this monitoring extends beyond the border states to identify problems that develop if Mexican carriers operate more extensively outside the border states during the pilot program.

Positive Action Taken to Improve Bus Inspection Coverage, But Additional Issues Should Be Addressed

As I previously mentioned, further improvements are needed to support border inspections of Mexican buses. However, at this time, DOT does not plan to include commercial buses in the pilot program for cross-border trucking.

The Act's criteria⁸ call for adequate capacity at crossings to conduct a sufficient number of vehicle inspections and driver licensing checks; these criteria apply to buses as well as trucks. The Act provides no specific guidance distinguishing commercial buses from commercial trucks, although buses operate differently from commercial trucks at the border. Buses are permitted to enter the United States at separate border crossings and at times when commercial trucks are restricted. While our January 2005 report identified no issues specific to truck inspections, we found that sufficient staff were not available at some designated bus crossings to meet the Act's requirements for verifying the driver's commercial license and inspecting vehicles.

Our 2005 report recommended that FMCSA revise policies, procedures, staffing, and facility plans to make Mexican bus coverage consistent with FMCSA policy on vehicle and driver inspections for commercial trucks that are granted long-haul authority. In response to our report, FMCSA worked with the U.S. Customs and Border Protection Service to identify mutually acceptable procedures. FMCSA in

⁸ Section 350 (c)(1)(F).

February 2006 issued a Southern Border Commercial Bus Inspection Plan identifying ports of entry for commercial buses in each southern border state, along with a description of their respective bus inspection issues and the planned strategies for addressing those issues.

The bus inspection plan represents a positive step, but our current work identified additional bus inspection issues that should be addressed in the FMCSA plan. For example, as part of our September 2006 audit work at the Lincoln-Juarez crossing in Laredo, Texas, we identified physical space and capacity issues that prevented FMCSA and the state motor carrier inspectors from conducting bus inspections during high volume holiday periods. This important issue was not identified in FMCSA's Southern Border Commercial Bus Inspection Plan. Additional potential issues with bus inspections, such as the lack of a ramp on which to conduct inspections, were brought to our attention during contacts with inspectors at other, randomly selected border crossings.

These issues could affect the implementation of the Act's requirements for bus inspections if Mexican passenger carriers are granted long-haul authority to operate beyond the commercial zone.

Two Non-Section 350 Issues Not Specified in the Act Also Need Continued Attention

Action is needed on implementing FMCSA's policy from 2005 on compliance with motor vehicle safety manufacturing standards. Our 2005 report discussed a pending rule that would have required all carriers operating in the United States, including Mexican motor carriers, to display a label that the vehicle was certified by the manufacturer as meeting all applicable Federal motor vehicle safety standards. In August 2005, FMCSA subsequently withdrew the rule based on its determination that it could effectively ensure compliance with the Federal motor vehicle safety standards through effective enforcement of the current motor carrier safety regulations and policies. At the same time it issued internal policy to its staff on compliance with motor vehicle safety standards, which included instructions on how inspectors could use vehicle identification numbers to make this determination. FMCSA reported that certain procedures in the policy had been implemented; however, the policy noted that further guidance would be forthcoming before the policy would go into effect. To date, no additional guidance has been provided although FMCSA reported that they were reassessing whether future guidance is necessary.

Prompt resolution of the issue and full implementation of this policy on compliance with motor vehicle safety standards will help ensure that inspectors are able to identify vehicles not meeting the requirements established for Mexican-

domiciled carriers. FMCSA has issued a policy requiring Mexican-domiciled carriers applying to operate in the United States to certify that their vehicles were manufactured or retrofitted in compliance with Federal motor vehicle standards applicable at the time they were built, and plans to confirm that certification during the pre-authority safety audit and subsequent inspections. If FMCSA or state inspectors determine, through vehicle inspections or during a pre-authority safety audit, that Mexican motor carriers are operating vehicles that do not comply with the safety standards, FMCSA may use this information to deny, suspend, or revoke a carrier's operating authority or certificate of registration, or issue penalties for the falsification.

Further, SAFETEA-LU⁹ charged the Administrator of FMCSA with conducting a review to determine the degree to which Canadian and Mexican commercial motor vehicles comply with Federal motor vehicle safety standards. This review was to have been completed within 1 year of enactment—by August 2006. The review has not yet been released by the Department.

Continued attention is needed on drug and alcohol testing issues. FMCSA has issued a policy as required under the Act regarding drug and alcohol testing. However, issues noted in our last report on this topic but not included in the Act's requirements need continued attention. In our 2005 report, we noted that Mexico lacked a certified drug-testing laboratory, but that drug and alcohol test-collection facilities in Mexico were sending specimens to certified labs in the United States. In a 1998 memorandum of understanding between DOT and its Mexican equivalent, the Mexican authorities agreed to follow collection procedures equivalent to those used by DOT. In 2005, we recommended that FMCSA establish milestones to ensure Mexican motor carrier drug and alcohol testing issues—such as the adequacy of controls at collection sites—are addressed. Our current work shows that FMCSA has continued to meet with officials on these matters. Given the announcement of the new pilot program, FMCSA should continue to work, in conjunction with other appropriate offices, to ensure that drug and alcohol procedures, such as the establishment of sufficient controls at collection sites, are adequate.

The Pilot Program

I would now like to turn to the just-announced pilot program. While our current audit did not include an assessment of this program, we would offer the following two immediate observations based on current and past work:

⁹ Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59, August 10, 2005).

- *FMCSA will need to establish good screening mechanisms at the border crossings, in cooperation with the U.S. Customs and Border Protection Service, to ensure that long-haul trucks participating in the pilot program are identified for required licensing checks and inspections from among the large number of commercial trucks entering the United States daily at each commercial crossing.* FMCSA's Cross-Border Truck Safety Program states that "every truck that crosses the border as part of the pilot will be checked—**every truck, every time.**" This could be problematic. Some 4.6 million commercial trucks entered the United States from Mexico in FY 2005. To screen out pilot program participants from among this high volume of traffic, it will need to simultaneously screen vehicles participating in the pilot program from among all commercial traffic crossing the border while also continuing to inspect vehicles and check drivers. Screening carriers participating in the pilot may very well require close coordination with Customs and Border Protection agents, who have initial interaction with these motor carriers. Our observations at one high-volume border crossing illustrate the challenge posed in screening pilot program participants.

Hundreds of vehicles entered the United States at the high-volume crossing each day; FMCSA selected vehicles for inspection from the line of trucks waiting to exit the border crossing. However, once the vehicles were diverted, no FMCSA personnel remained at the screening point to monitor carrier traffic. Unless this practice is changed, or other procedures for screening are developed in conjunction with U.S. Customs and Border Protection Service for the pilot program, FMCSA's commitment to check every truck, every time, could be at risk.

- *FMCSA needs to establish clear objectives, milestones, and measures of success.* The pilot program could provide a good opportunity to test FMCSA's preparations, evaluate the agency's performance, and assess the risks, if any, posed by opening the border. However, the agency should establish meaningful criteria for measuring the pilot program's success and for determining whether to open the border to a greater number of Mexican carriers at its conclusion. Information provided to us to date does not include details of how the pilot program's success will be evaluated.

This concludes my statement. Attached to my statement is additional information on our prior audit reports. I would be pleased to answer any questions that you may have at this time.

Prior Audit Coverage by the Department of Transportation's Office of Inspector General

OIG Report Number MH-2005-032, "Follow-up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions," January 3, 2005

We reported that FMCSA has sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight Section 350 safety provisions subject to OIG review in the FY 2002 Transportation and Related Agencies Appropriations Act (The FY 2002 Act). However, until an agreement or other understandings related to on-site safety reviews is reached with Mexico, FMCSA cannot, in our view, grant long-haul operating authority to any Mexican motor carrier. Additionally, given new background requirements for U.S. drivers applying for hazardous materials endorsements, an agreement will need to be in place with Mexico to cover similar background requirements for vehicles owned or leased by Mexican motor carriers hauling hazardous materials. While negotiations are being carried out with Mexico on these two issues, which are preconditions to opening the border, FMCSA should close remaining gaps in reaching full compliance with Section 350 requirements related to bus coverage, enforcement authority, Weigh-in-Motion Systems, and the comprehensiveness of the data system used to monitor Mexican driver records in the United States.

OIG Report Number MH-2003-041, "Follow-up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," May 16, 2003

We reported that FMCSA had substantially completed the actions necessary to meet Section 350 requirements, although the report noted several incomplete items in need of action. Specifically, FMCSA needed to fill 3 enforcement personnel vacancies to reach the target of 274, complete an agreement at one of 25 border crossings to permit detaining of commercial vehicles, and ensure states adopt FMCSA's rule authorizing their enforcement personnel to take action when encountering a vehicle operating without authority.

OIG Report Number MH-2002-094, "Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," June 25, 2002

We reported that FMCSA made substantial progress toward meeting the FY 2002 Act requirements to hire and train inspectors, establish inspection facilities, and develop safety processes and procedures for Mexican long-haul carriers. FMCSA proposed to complete within 60 days those actions that were in process and

planned to meet the Act's requirements, except the hiring and training of safety investigators and training supervisors.

OIG Report Number MH-2001-096, "Motor Carrier Safety at the U.S.-Mexico Border," September 21, 2001

Our audit recommended that FMCSA strengthen safety controls at the border in the areas of staffing, safety reviews and inspections, enforcement, facilities, rulemakings, and outreach.

OIG Report Number MH-2001-059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001

Our audit found that: (1) the percentage of Mexican trucks removed from service because of serious safety violations declined from 44 percent in FY 1997 to 36 percent in FY 2000; (2) FMCSA increased the authorized number of inspectors at the southern border from 13 in FY 1998 to 60 in FY 2001, and requested 80 additional enforcement personnel in its FY 2002 budget request; and (3) there had been few needed improvements to inspection facilities used by Federal and state commercial vehicle inspectors at border crossings.

OIG Report Number TR-2000-013, "Mexico-Domiciled Motor Carriers," November 4, 1999

We found that Mexico-domiciled motor carriers were operating improperly in the United States and violating U.S. statutes either by not obtaining operating authority or by operating beyond the scope of their authority.

OIG Report Number TR-1999-034, "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," December 28, 1998

We reported that the actions in preparation for opening the U.S.-Mexico border to Mexican long-haul trucks did not provide reasonable assurance in the near term that trucks entering the United States would comply with U.S. safety regulations. With the exception of California, neither the Federal Highway Administration nor the states' plans provided for an adequate presence of inspectors at border crossings for trucks currently operating in the commercial zones.